IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10591 of 1999

with

SPECIAL CIVIL APPLICATION No 1340 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KISHORE J HIRANI

Appearance:

1. Special Civil Application No. 10591 of 1999

MR KS JHAVERI for Petitioner

MR JS BRAHMBHATT for Respondent No. 1, 2

2. Special Civil ApplicationNo 1340 of 2000

MR KS JHAVERI for Petitioner

MR JS BRAHMBHATT for Respondent No. 1, 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/05/2000

ORAL JUDGEMENT

Rule in both the petitions. Both the Learned Advocates appearing for the respective parties waive service of rule and with consent of both the learned advocates, these matters are taken up for final hearing today and same is finally heard today.

2. In the present petition, the Special Civil Application No. 10591 of 1999 wherein the order passed by the Industrial Tribunal in Approval Application No. 227 of 1997 in reference I.T.No. 64/96 dated 16.7.99 is challenged by the petitioner Corporation. The Special Civil Application No. 1340 of 2000 is filed by the workman for writ of mandamus against the Corporation for not to implement the order passed by the Industrial Tribunal in rejecting the Approval Application filed by the Corporation. Therefore, both the matters have been heard together is based upon implementation of one order and challenged against their same order by the Corporation.

3. The brief facts of the present petition is that the respondent workman was working as a conductor at Junagadh Division, Batwa Depot. The respondent workman was on duty as a conducter on 20th October, 1995 on route from Somnath to Jamnagar. At that time the bus was checked by the checking staff at Khambaliya. At that time the allegations were made against the respondent workman that in all he recovered fares from 17 passengers of Rs.109/- and not issued tickets to such passengers those who were travelling from Advana to Khambaliya and Bharthar to Khambaliya. On the basis of the said checking, the chargesheet was served to the respondent workman by the petitioner Corporation which was replied by the respondent workman on 25.6.96. The contention raised by the respondent workman that the statement of the passengers were recorded by the checking staff in absence of the respondent workman and such statement were obtained in arbitrary manner by the checking staff and checking staff has taken signature of the respondent workman in blank paper and spot statement was given by the respondent workman wherein he stated that in the bus one child passenger was sick and therefore he suggested to the driver to drive the bus with some speed so atleast the child passenger may get medical treatment within some reasonable time. He also objected that even according to the way bill 17 passengers were found without tickets is not correct. if the way bill was examined by the checking staff then these allegations amount to misunderstanding and misdirected by the Checking Staff.

4. After the reply of the chargesheet in the

departmental inquiry reporter was examined and same was cross-examined by the representative of the respondent workman in the inquiry, the respondent workman has asked for cross-examination of certain passengers whose statement has been recorded by the Checking Staff. The said request was made by the respondent workman in the departmental inquiry. He also pointed out in the inquiry that if the report submitted by the Checking Staff is considered to be true than allegation of recovering fare of Rs.109/- is correct then it comes to Rs.128/-. After the completion of the departmental inquiry, a show-cause notice was served to the respondent workman by the Competent Authority on 24.4.97, thereafter the respondent workman has submitted reply on 21.5.97 and the Competent Authority has passed a dismissal order on 6.6.97. At that time, the industrial dispute was pending before the Industrial Tribunal being reference No. 64/96, wherein Approval Application under Section 33(2)(b) of the Industrial Disputes Act, 1947 has been filed being No.227/97. Before the Industrial Tribunal, the respondent workman has submitted the reply vide Exh.5 and pointed out that at the time of checking in the bus 82 passengers were travelling and he had issued tickets to all the passengers but the Checking Staff has submitted false reports against the respondent workman. The number of passengers 82 was found on record after calculation on the basis of the way bill on the date of incident. Thereafter, the other side has not lead any oral evidence before the Industrial Tribunal and the Tribunal has examined the merits of the matter and come to the conclusion that in the departmental inquiry when the specific request was made by the respondent workman that he may be given opportunity to cross-examine the passengers whose statement were taken by the Checking Staff but this opportunity was not given to the respondent workman by the Competent Authority and therefore the principles of natural justice has been violated in conducting the departmental inquiry and considering this aspect and further that no oral evidence was led by the petitioner Corporation before the Industrial Tribunal to prove the fact that whether one month notice pay was paid to the respondent workman at the time of dismissal or not and therefore considering all these aspects, the Industrial Tribunal came to a conclusion that the departmental inquiry conducted against the respondent workman is illegal and invalid and result thereto, the approval application has been rejected by the Industrial Tribunal on 16.7.99. The past record wherein in all 12 incident have occurred in the history sheet of the respondent workman.

5. The Learned Advocate Mr.K.S.Jhaveri appearing on behalf of the petitioner Corporation has pointed out that when the Industrial Tribunal has come to the conclusion that the departmental inquiry has been vitiated and same has been decided and it is held against the respondent workman in violation of the principles of natural justice then, in such circumstances, it is the duty of the Industrial Tribunal to give opportunity to the petitioner Corporation to prove the misconduct before the Industrial Tribunal. He also submitted one aspect that in the approval application which was submitted by the petitioner Corporation before the Industrial Tribunal in para 1/5 a specific request was made by the petitioner Corporation that if ultimately during the course of the hearing of the approval application if the Industrial Tribunal comes to the conclusion that the departmental inquiry which was conducted against the respondent workman is declared illegal and invalid, then in such circumstances or in such events, an opportunity may be given to the petitioner Corporation to prove the misconduct against the respondent workman by leading oral evidence. Therefore specific request was made by the petitioner Corporation in approval application but Industrial Tribunal has not given any opportunity to the petitioner Corporation and has come to a conclusion that the departmental inquiry is held to be illegal, invalid and against the principles of natural justice which resulted in rejection of approval application.

6. Learned Advocate Mr.Brambhatt submitted that the Industrial Tribunal has not committed any error and rightly come to the conclusion that the departmental inquiry is invalid and illegal. He also submitted that though specific request was made by the petitioner Corporation before the Industrial Tribunal in the Approval Application but no such request thereafter was made in writing by giving a separate application to the Industrial Tribunal that in case if departmental inquiry is vitiated on the ground of violating principles of natural justice, then opportunity may be given to the petitioner Corporation to prove the misconduct against the respondent workman. Therefore, the Tribunal has rightly passed the order rejecting the approval application 16.7.1999.

7. In view of these submissions of both the Learned Advocates, the matter is required to be examined in view of the fact that the petitioner Corporation has asked for opportunity before the Tribunal at the time of filing the approval application then in such circumstances, it is the duty of the Industrial Tribunal at the time when the

Tribunal comes to the conclusion that departmental inquiry is vitiated then opportunity must be given to the petitioner Corporation to prove the misconduct and for that the matter is required to be remanded back to the Industrial Tribunal for giving opportunity to the petitioner Corporation to prove the misconduct against the respondent workmen.

8. At this occasion, both the Learned Advocates have requested to this Court that instead of remanding the matter back to the Industrial Tribunal for giving opportunity to the petitioner Corporation to prove the misconduct against the respondent workman then it will take some more time to pass appropriate orders on the basis of evidence and there must be some more time to lead oral evidence by the Corporation and ultimately the workman remains without job and if ultimately the Corporation is not able to prove the misconduct then the Corporation shall have to pay full back wages for the interim period without taking work from the respondent workman. Therefore, considering these aspects, both the Learned Advocates jointly orally requested to this Court to consider the matter as it is on merits as if exercising powers under Section 11-A of the Industrial Tribunal Act, 1947.

9. Both the Learned Advocates relied upon the decision of the Apex Court of Workmen of Bharat Fritz Werner (P) Ltd Vs. Bharat Fritz Werner (P) Ltd reported in JT 1990 (1) SC 305. The Apex Court has considered the similar situation and also examined the decision of the Karnataka High Court of K.S.R.T. Corporation Vs. B.M.Patil & Anr reported in 1996 (1) Lab IC 109. The Apex Court has observed that such acts of misconduct were not such as to deserve extreme penalty of dismissal and have directed that these workmen should be taken back on duty but with 1/2 back wages. The Learned Judges considered denial of 1/2 back wages to the workman as a sufficient punishment for the act of misconduct committed by them. The aforesaid directions have been given by the High Court while exercising the powers which are exercised by the Industrial Tribunal in view of the joint memo dated 22.6.84 submitted by both the parties whereby it was requested that the Court may decide the entire matter without remitting to the Tribunal and grant appropriate relied finally in accordance with law. Moreover, in view of the provisions contained in Section 11-A of the Act which empowers the Industrial Tribunal to go into the question whether the order of discharge or dismissal passed against these workmen is justified or not and permits the Tribunal to set aside the order of

discharge or dismissal as the circumstances of the case may require. It was open to the High Court to consider what would be the adequate punishment for the misconduct found to have been committed by these workmen and taking the view that the act of misconduct found proved against these 5 workmen were not such as to warrant dismissal and denial of 1/2 of back wages for the period of about 6 years for adequate punishment for the misconduct found to have been committed. We do not find any infirmity in the aforesaid view expressed by the Appellate Bench of the High Court.

10. In view of the observations made by the Apex Court, the Learned Advocates appearing on behalf of the respective parties jointly requested to exercise the similar powers which can be exercised by the Industrial Tribunal under Section 11-A of the Industrial Tribunal act, 1947 and pass appropriate orders in accordance with law and after examining the merits of the matter. Therefore, considering this decision of the Apex Court and the observations made thereunder, now I am examining the merits of the matter as requested by the Learned Advocates.

11. On the basis of the request made by both the learned advocates jointly and considering the facts and circumstances of the case and considering the observations made by the Apex Court in above referred cases, I am of the view that the time can be saved to decide the matter on merits while exercising similar powers under Section 11-A of the Industrial disputes Act, 1947. In the present facts, the allegations against the respondent workman that from 17 passengers at the time of checking he recovered fares and not issued the tickets of Rs.109/-. The defence of the respondent workman in reply to the chargesheet that at the time of checking one child passenger all of a sudden fell sick and required medical treatment immediately and therefore he was doing road booking and requested the driver to drive the vehicle in high speed so that atleast the bus can reach the medical dispensary within some immediate reasonable time and with a view that a child can get adequate medical facility from the dispensary. So the defence of the respondent workman that he had not recover the fare from respective passengers as alleged against the respondent workman in chargesheet. The Traffic cash was not checked by the Checking Staff. However on the record considering the way bill itself at the time of checking 62 passengers were found in the bus, this fact has not been disputed by the petitioner Corporation. Considering the statement of the respondent workman which was given on the spot that

because of this difficulty of a child passenger who fell sick all of sudden required medical treatment, this incident has occurred and therefore considering the defence of the respondent workman and considering the past record about 12 instances wherein none of the incidents of serious nature are committed by the respondent workman in past. In almost instances, Rs.10/-, 5/-, 15/- 3 months, 6 months, 9 months Rs.40/4 years increments were stopped some of them cumulative and some of them without cumulative effect. Therefore, considering the merits of the matter, the facts that 62 passengers were found in the bus and Traffic cash was not checked and one child passenger was found to be sick which was not disputed by the Checking Staff. Because of these facts were mentioned by the respondent workman on the spot statement obtained by the checking staff. Therefore, according to my opinion, the punishment of dismissal looking to the merits of the matter is harsh, unjustified and arbitrary. However, if a denial of back wages for the interim period from the date of dismissal till the date of order passed by the Industrial Tribunal can be considered to be a sufficient punishment and over and above if 2 increments have been stopped with permanent effect for the misconduct which found to be proved against the respondent workman would meet the ends of justice.

12. Before coming to the final conclusion, considering the duties of the conductor some of the relevant facts are taken into account by the Disciplinary Authority before imposing the extreme penalty of dismissal against the workman.

13. The misconduct for which the extreme punishment visited the worker is causing to very negligible loss to the employer. A serious question that arises in such case would be, besides the legality of the punishment, the morality of imposing such a severe punishment as well. While imposing a punishment the employer should first consider whether the delinquent committed the offence with intent to make unlawful gain and to pilfer the revenue of the employer. Was it with intention to gain Rs.109/- that the worker committed the present misconduct? Was he in such a depraved circumstance that he desired to make an illegal gain of a trivial amount of Rs.109/-? What was the number of passengers travelling in the bus and is it possible that he would have accidentally omitted to issue tickets? Is it not possible that while he was in the process of issuing tickets, the 17 persons might have boarded the bus? We have come across such cases where such omissions take

place in buses loaded with more than the permitted number of passengers. Such may be cases of human error committed by the Conductor while issuing tickets to passengers travelling in a bus with passengers much more than the permitted number. The Disciplinary Authority should keep in mind all facts of the problem before it awards the extreme penalty of dismissal. A misconduct like the above on several instances is not committed insistentionally. It is too much to imagine that a worker would have omitted to issue tickets deliberately to gain few rupees at the risk of his job. More often, it is due to the crowd in the bus that he misses to issue tickets than a desire by him to gain few rupees. The casastrophe that may befall is more serious that what is sought to be prevented. First it visists the employee. He is rendered jobless. It generates a litigation which in the present pattern spreads over years producing ultimately a disgruntled employee. Actually the real victim of any such punishment is the family of the worker whose breadwinner is jobless. the future is rendered bleak to them and it in its turn causes greater hardship to the society than it intended to cure. That apart he Management also shares the losses in another way. when the worker is dismissed, someone else will have to be placed in his place to discharge the duties. And if the worker is ordered to be reinstated ultimately with back-wages, virtually there will be double payments i.e. two persons, would have to be paid for a single job. In the case of a public sector undertaking, the loss is passed on to the common man, the tax payer. The question then would be in the case of a conductor who has a past history, should the employer ignore the same? This is a case, the remedy for which the employer himself should discover and the solution is not far to discover. In the case of a ticketless traveller the Management has designed a method to curb the same by imposing fine on them. The object with which this is done is so that he may not repeat travelling in the bus without tickets. This method can certainly be considered of imposing of penalty on the Conductor himself who is discovered to be intentionally pilfering the revenue of the Corporation. We may notice that in these cases of non-issue of tickets, We may take note of the fact that there are two parties joining to commit the misconduct, i.e. the Conductor and the passenger. If the Conductor wants to make an unlawful gain, then he has to collect the fare and fail to issue tickets. In such an events, the passenger who boards the bus must cooperate with the Conductor. If he has to co-operate, then he should be familiar to the Conductor and he should agreed to be a party to commit the misconduct at the risk of paying

penalty in the event of being caught by the inspecting staff. It is too much to imagine that the conductor will hatch a conspiracy to pilfer revenue of the Corporation as and when stray passengers board the bus at various stages. If the Conductor wants to make an illegal gain by the omission to issue tickets, the passenger has to be condescending party. This is really unlikely. Hence, the benefit of doubt in cases of stray lapses should be that the omission to issue tickets may be accidental. Hence, the disciplinary authority should reserve the punishment of dismissal only in extreme cases. It is where the exercise of discretion by the disciplinary authority steps in. It cannot and should not act like a robot, it justice should be moulded with humanism and understanding. It should really assess each case on its own merit. the fact that on a past occasion the delinquent might have acted in a particular manner does not mean that on the particular occasion as well he would have acted with intent to cause loss to the employer. Each set of facts should be decided with reference to evidence regarding the said allegations and those allegations should be the basis of the decision. May be, the past conduct of the worker may be a ground to assume that the delinquent may have had propensity to commit the misconduct and to assess the quantum of punishment to be imposed. But that by itself cannot provide any foundation to hold that the present conduct of the worker is a misconduct.

14. But it must be stated that in this case that the facts clearly spell out that the worker had been negligent in discharging his duties.

15. Recently, the Apex Court has decided the case of conductor in the case of U.P.State Road Transport Corporation and others Vs. Maheshkumar Mishra and others reported in 2000 Lab. I.C. 1031. The relevant paras 5 to 11 are relevant which are quoted as under:-

"5. The Bus which was checked by the Transport Inspector was meant to ply within the District of Allahabad and was not a long distance Bus. The allegation against the respondent was that though the passengers had boarded the Bus at the "High Court" for "Manauri" for which they should have been charged Rs.1.80, they were issued tickets from "Zero Road" to "Manauri" and they were charged only Rs.1.50. The only evidence on the basis of which the respondent was punished as the

way bill and the tickets which had not been punched. The passengers were not examined at the trial nor was the statement of any passenger recorded at the time when the Bus was checked so that it could ascertained whether they had boarded the Bus at the "High Court" or at "Zero Road". Reliance was placed by the disciplinary Authority and the Tribunal on the report of the Transport Inspector which also bears the signature of the respondent. This document was relied upon by the Disciplinary Authority as also by the Tribunal on the ground that if the contents of the report were not correct, the respondent ought not to have signed the report and he should have protested then and there. Since this was not done, the inference drawn by the Disciplinary Authority as also by the Tribunal was that whatever was written in the report was correct and it was on that basis that the respondent was held to be guilty.

6. It was in the background of these circumstances that the High Court exercised its discretion under Article 226 of the Constitution and interfered with the quantum of punishment inflicted by the Disciplinary Authority. It may be that the order of dismissal was held to be valid and proper by the U.P. State Public Services Tribunal but the Tribunal also overlooked the fact that though sufficient evidence could have been collected at the spot to indicate that the passengers to whom tickets were issued by the respondent had boarded the Bus at the "High Court" and not at "Zero Road" but this was not done. It was a Bus plied in the City itself and, therefore, the passengers, who were available in the Bus, being local passengers could have been approached at the spot for stating whether they had boarded the Bus at the "High Court" or at "Zero Road." Learned Counsel for the appellants has placed reliance upon an unreported decision of this Court in Civil Appeal No. 9754 of 1995, arising out of SLP (C) No. 1960 of 1995 (U.P. State Road Transport Corporation Vs. Om Prakash Pandey), in which the order of the High Court, by which interference was made with the punishment inflicted upon the delinquent employee of the Corporation, was set aside. This case is clearly distinguishable on the ground that a number of passengers were allowed to travel without tickets and, therefore,

the misconduct imputed to the employee was serious. This is not the case here as the respondent who were found travelling in the Bus, but the dispute was only with regard to the sport or place at which they had boarded the Bus. To put it differently, the dispute was whether they had boarded the Bus at "Zero Road" or at the "High Court". In these circumstances, the High Court was justified in interfering with the quantum of punishment.

7. A Three Judge Bench of this Court in B.C.Chaturvedi V. Union of India (1995) 6 SCC 749 (1995 AIR SCW 4374: AIR 1996 SC 484: 1996 Lab IC 462) laid down as under (Para 18 of AIR, Lab IC):-

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

8. This will show that no only this Court but also the High Court can interfere with the punishment inflicted upon the delinquent employee, if penalty, shocks the conscience of the Court. The law, therefore, is not, as contended by the learned counsel for the appellants, that the High Court can, in no circumstance, interfere with the quantum of punishment imposed upon a delinquent employee after disciplinary proceedings.

9. Another Three Judge Bench of this Court in Colour-Chem Ltd. V. A.L.Alaspurkar, (1998) 3 SCC

192: (1998 AIR SCW 709: AIR 1998 SC 948: 1998 Lab IC 974), has also laid down the same proposition and held that if the punishment imposed is shockingly disproportionate to the charges held proved against the employee, it will be open to the Court to interfere.

10. As pointed out earlier, the order of the High Court though extremely brief, must have been based on overall consideration of the facts of the case and it must have exercised its jurisdiction only when it was shocked to notice that though all the passengers had been issued tickets, the only dispute was with regard to the point at which they had board the Bus for which the punishment of dismissal from service was highly disproportionate.

11. We have already noticed above that instead of charging a fare of Rs.1.80, the respondent had charged a fare of Rs.1.50 from the passengers. While the appellants maintained that the passengers had boarded the Bus at the "High Court" and were to alight at "Manauri", the respondent contended that the passengers had boarded the Bus at "Zero Road" and were to get down at "Manauri" and therefore, he had rightly charged Rs.1.50 from those passengers. This fact could have been established beyond doubt if any of those passengers was examined at the domestic enquiry, or the Transport Inspector, who checked the Bus, could have recorded their statement at the spot. This was not done and the reliance was placed only upon the report of the Transport Inspector which was signed by the respondent also. It was not a case where the passengers were allowed to travel without tickets so that the amount of fare charged from the passengers could be pocketed by him."

16. Therefore, considering all these aspect of the matter and defence of the respondent workman has been admitted in the cross-examination and at the time of checking when the respondent was doing road booking and having long more years of service of the respondent workman, traffic cash was not checked and a short distance from where passengers boarded and the bus was checked. These are the circumstances which do not justify the punishment of dismissal. Therefore, considering all these aspects and merits of the matter, I am of the view that the punishment of dismissal is harsh,

unjustified and arbitrary. As well as said punishment of dismissal imposed is shockingly disproportionate to the charges held to be proved against the respondent and said punishment shocks the conscience of the Court.

17. Considering the above factors which are relevant at the time of taking the decision of penalty in respect to the nature of conduct which requires to be performed by the conductor, according to my opinion the order passed by the Industrial Tribunal in Approval Application No. 227 of 1997 dated 16.7.99 is required to be quashed and set aside and same is hereby quashed and set aside. Considering the misconduct, the nature of defence of respondent workman and the facts found from the record, according to my opinion if back wages for the interim period from the date of dismissal till the date of decision given by the Industrial Tribunal is denied to the respondent workman by way of penalty and over and above his 2 increments can be stopped with permanent effect would meet the ends of justice and therefore accordingly it is directed to the petitioner Corporation to reinstate the respondent workman with continuity of service without back wages for the interim period from the date of dismissal i.e. 6.6.1997 till the date of decision given by the Industrial Tribunal i.e. 16.7.1999 and respondent workman is entitled to full wages from the date of decision of the Tribunal i..e. 16.7.99 till the date of actual reinstatement and petitioner Corporation is entitled to impose a punishment of stoppage of 2 increments with cumulative effect to the respondent workman. Therefore, it is directed to the petitioner Corporation to reinstate the respondent workman in service within a period of four weeks from the date of receiving the certified copy of the said order and it is further directed to the petitioner Corporation to pay full wages to the respondent workman from 16.7.1999 till the date of actual reinstatement within a period of six weeks and respondent workman is to be punished by the petitioner Corporation by stoppage of 2 increments with permanent effect. Accordingly, both the Special Civil Applications are partly allowed. Rule made absolute in both the petitions.

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